

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STEVE McMULLEN, a single

person,

Plaintiff,

v.

JP MORGAN CHASE BANK,
QUALITY LOAN SERVICES
CORPORATION and PRIORITY
POSTING AND PUBLISHING, INC.,

Defendants.

NO. CV-13-087-RHW

**ORDER GRANTING
DEFENDANTS' MOTIONS
TO DISMISS; GRANTING
LEAVE TO FILE AN
AMENDED COMPLAINT**

Before the Court are Defendant JPMorgan Chase Bank, N.A.'s Motion to Dismiss, ECF No. 6; Defendants Quality Loan Service Corporation of Washington and Priority Posting and Publishing, Inc.'s Motion to Dismiss, ECF No. 7, and Plaintiff's *pro se* Motion to Deny Defendants' Motion of Dismiss, ECF No. 13. Defendant JPMorgan Chase Bank is represented by Joshua Rataezyk. Defendant Quality Loan Service Corporation and Priority Posting and Publishing are represented by Mary Stearns.

BACKGROUND

The following facts are taken from Plaintiff's complaint:

In September, 2006, Plaintiff entered into a Purchase Agreement to purchase property located at 3027 S. Arthur, Spokane, Washington. Complaint, ¶¶ 3, 5. Plaintiff borrowed money from Washington Mutual Bank to purchase the property. ¶ 6. As a result, Washington Mutual Bank became the lien holder and beneficiary of the Note and Deed of Trust against the property. ¶ 7. At some point,

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1 the loan was acquired by Defendant JPMorgan Chase. ¶ 8.

2 Plaintiff alleges he has no knowledge of being provided any assignment or
 3 other document demonstrating the transfer of the Note and Deed of Trust from
 4 Washington Mutual Bank to any other person; no knowledge as to how
 5 “Defendant”¹ allegedly came to be the “beneficiary” under the Deed of Trust; and
 6 no knowledge of the present owner’s identity. ¶¶ 13, 14.

7 Plaintiff alleges that because “the severance of the ownership and
 8 possession of the original Note and Deed of Trust has occurred, with one or more
 9 assignments and the parsed sale of certain rights under the Note and Deed of
 10 Trust, any party are [sic] legally precluded from foreclosing on the PROPERTY
 11 unless and until they can demonstrate full legal standing to do so.” ¶ 18. Plaintiff
 12 also alleges he has been a victim of “robo signing.” ¶ 19.

13 Plaintiff is seeking injunctive relief that precludes and cancels the Trustee’s
 14 Sale and gives exclusive control and ownership of the property to the OWNERS.
 15 He also seeks damages for violations of the Washington Consumer Protection Act
 16 and for breach of fiduciary duty. He maintains Defendants failed to record a
 17 proper, valid and correct Notice of Default, or Notice of Trustee Sale, failed to
 18 comply with proper notification, and failed to comply with and maintain a street
 19 address in Washington where personal services of process may be made. He also
 20 seeks quiet title free and clear from all Defendants.

21 JURISDICTION

22 Defendants removed Plaintiff’s complaint from Spokane County Superior
 23 Court, citing diversity of citizenship. Plaintiff is a citizen of the State of Idaho.
 24 JPMorgan Chase is a National Banking Association whose Main Office is in Ohio.
 25 28 U.S.C. §§ 1332, 1348 (A National Banking Association is a citizen of the state
 26 in which its Main Office, as set forth in its Articles of Association, is located).

27
 28 ¹Plaintiff did not specify which Defendant was named beneficiary.

1 Defendant Quality Loan Service Corporation of Washington has its principal place
 2 of business in the State of Washington, and Defendant Priority Posting and
 3 Publishing, Inc. maintains its principal place of business in the State of California.
 4 The case was properly removed to federal court, based on diversity of citizenship.

5 **MOTION STANDARD**

6 “To survive a motion to dismiss, a complaint must contain sufficient factual
 7 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”
 8 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim is plausible “when the
 9 plaintiff pleads factual content that allows the court to draw reasonable inference
 10 that the defendant is liable for the conduct alleged.” *Id.* The Court must accept
 11 Plaintiff’s factual allegations as true. *Id.* at 678. However, the Court is “not bound
 12 to accept as true a legal conclusion couched as a factual allegation.” *Bell Atlantic*
 13 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007). As the Supreme Court explained,
 14 “Rule 8 marks a notable and generous departure from the hyper-technical, code-
 15 pleading regime of a prior era, but it does not unlock the doors of discovery for a
 16 plaintiff armed with nothing more than conclusions.” *Iqbal*, 556 U.S. at 679.

17 If a court finds that a complaint must be dismissed because it does not state
 18 a claim for which relief may be granted, it must then decide whether to grant leave
 19 to amend. *Akhtar v. Mesa*, 698 F.3d 1210, 1212 (9th Cir. 2012). A court must give
 20 a *pro se* litigant leave to amend the complaint unless it is “absolutely clear that the
 21 deficiencies of the complaint cannot be cured by amendment.” *Id.*

22 Under the doctrine of incorporation by reference, district courts may
 23 consider certain materials, such as documents attached to the complaint,
 24 documents incorporated by reference in the complaint, or matters of judicial
 25 notice, without converting the motion to dismiss into a motion for summary
 26 judgment. *Van Buskirk v. Cable News Network*, 284 F.3d 977, 980 (9th Cir. 2002).

27 Supplemental documents not attached to the complaint may be considered in
 28 ruling on a motion to dismiss if Plaintiff’s complaint refers extensively to them or

1 if they are essential to Plaintiff's claim. *United States v. Ritchie*, 342 F.3d 903, 908
 2 (9th Cir. 2003). The rule is limited to documents "whose authenticity no party
 3 questions." *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir. 1994)

4 Attached to Defendant JPMorgan Chase Bank's Motion to Dismiss are:
 5 Adjustable Rate Note (Exhibit A); Deed of Trust (Exhibit B); Purchase and
 6 Assumption Agreement (Exhibit C); Limited Power of Attorney (Exhibit D);
 7 Notice of Default (Exhibit E); Notice of Trustee's Sale (Exhibit F). Attached to
 8 Defendant Quality Loan Service Corporation and Priority Posting and Publishing
 9 Inc.'s Motion to Dismiss is Beneficiary Declaration (Exhibit A). Because
 10 Plaintiff's complaint refers extensively to the Note and Deed of Trust, the Court
 11 will rely on them to decide the motions. The Deed of Trust named Transnation
 12 Title Ins. Co. as the trustee. ECF No. 6, Ex. B. Washington Mutual Bank, FA was
 13 named as the Lender. *Id.* Also, Plaintiff alleges that the Notice of Default dated
 14 April 23, 2010, and the Notice of Trustee sale dated October 4, 2012, were
 15 defective. The Court will also rely on these documents to decide the motions. The
 16 Notice of Default identified JPMorgan Chase as the owner of the Promissory Note
 17 and identified Washington Mutual Bank, FA as the loan servicer. Quality Loan
 18 Service Corp. of Washington was identified as the agent for JPMorgan Chase. The
 19 Notice of Trustee's Sale indicated that Quality Loan Service Corp. of Washington
 20 was trustee and indicated that Washington Mutual Bank assigned the beneficial
 21 interest to JPMorgan Chase Bank.

22 However, Plaintiff's complaint does not refer to Purchase and Assumption
 23 Agreement, and the Limited Power of Attorney. As such, the Court will not
 24 consider these documents in ruling on Defendant's Motion to Dismiss.

25 ANALYSIS

26 In his Complaint, Plaintiff seeks injunctive relief against the foreclosure
 27 action, asks the Court to give exclusive control and ownership of the property to
 28

1 the owners; and asks for declaratory relief that Defendant² has no legal standing to
 2 institute or maintain ownership or foreclose on the property. He also brings a
 3 claim for violation of the Consumer Protection Act; for breach of fiduciary duty;
 4 for violations of Wash. Rev. Code §§19.144.020; 61.24.030; and for quiet title.

5 **1. Claims against JPMorgan Chase**

6 Plaintiff alleges that Defendant JPMorgan Chase is not entitled to enforce
 7 the Note and Deed of Trust. According to JPMorgan Chase, it holds the Note, and
 8 thus has authority to foreclose on the note.

9 According to JPMorgan Chase, in 2008, Washington Mutual, the original
 10 holder of the note, was placed into receivership by the Federal Deposit Insurance
 11 Company (FDIC). JPMorgan Chase purchased certain WaMu assets. Defendant
 12 JPMorgan Chase asserts it is the rightful holder of the note because it acquired the
 13 Note from the FDIC as receiver for WaMu, and the original note was endorsed in
 14 blank. *See* Wash. Rev. Code 62A.3-205(b).³ The blank indorsement is contained in
 15 Exhibit A.

16

17 ²In his complaint, Plaintiff refers to Defendant BAC. Defendant BAC is not
 18 named as a Defendant. *See* ECF No. 1, Complaint ¶ D.2.

19 ³RCW 62A.3-205(b) provides: If an indorsement is made by the holder of an
 20 instrument and it is not a special indorsement, it is a “blank indorsement.” When
 21 indorsed in blank, an instrument becomes payable to bearer and may be negotiated
 22 by transfer of possession alone until specially indorsed. Subsection (a) provides: If
 23 an indorsement is made by the holder of an instrument, whether payable to an
 24 identified person or payable to bearer, and the indorsement identifies a person to
 25 whom it makes the instrument payable, it is a “special indorsement.” When
 26 specially indorsed, an instrument becomes payable to the identified person and
 27 may be negotiated only by the indorsement of that person. The principles stated in
 28 RCW 62A.3-110 apply to special indorsements.

1 Here, while Plaintiff alleges that Defendant JPMorgan Chase obtained
 2 the note illegally, he does not allege that Defendant is not the holder of the note.
 3 On the contrary, Plaintiff affirmatively states that Defendant holds the note. *See*
 4 ECF No. 1, Complaint, ¶ 8 (“At some point in time unknown to PLAINTIFF it
 5 appears the loan was somehow acquired by DEFENDANT CHASE.”).

6 Consequently, as holder of the note, Defendant has the legal right to
 7 foreclose on the deed of trust, even if it obtained the loan illegally. Wash. Rev.
 8 Code 62A.3-301⁴; *Bain v. Metro Mortg. Group., Inc.*, 175 Wash.2d 83, 104 (2012)
 9 (observing that the holder of the note secured by a deed of trust is entitled to
 10 foreclose on the deed of trust). Thus, because Plaintiff has not alleged that
 11 Defendant does not hold the note, Plaintiff’s claims against Defendant JPMorgan
 12 Chase fail.

13 2. **Claims against Defendant Quality**

14 Plaintiff alleges Defendant Quality does not have the right to conduct a
 15 trustee sale. Plaintiff also alleges defects in the Notice of Default and Notice of
 16 Trustee Sales. Plaintiff does not specifically allege any deficits, except to assert in
 17 ¶ F.4, that “RECON DEFENDANT as trustee failed to comply with and maintain a
 18 street address in this state where personal service of process may be made.” In
 19 liberally construing Plaintiff’s *pro se* Complaint, the Court assumes Plaintiff
 20 intended to identify Defendant Quality Loan Service Corp. as the Trustee. Even

21
 22 ⁴“Person entitled to enforce” an instrument means (I) the holder of the
 23 instrument, (ii) a nonholder in possession of the instrument who has the rights of a
 24 holder, or (iii) a person not in possession of the instrument who is entitled to
 25 enforce the instrument pursuant to RCW 62A.3-309 or 62A.3-418(d). A person
 26 may be a person entitled to enforce the instrument even though the person is not
 27 the owner of the instrument or is in wrongful possession of the instrument. Wash.
 28 Rev. Code § 62A.3-301.

1 so, the failure to allege specific defects of the notices is fatal to Plaintiff's claim.
2 Plaintiff has failed to adequately plead a claim under the Deed of Trust Act against
3 Quality Loan Service Corporation.

4 **3. Claims Against Defendant Priority**

5 At times in his Complaint, Plaintiff alleges that "Defendants" engaged in
6 certain conduct. However, these allegations are vague, non-specific, and general,
7 and are not directed at a specific Defendant. For instance, Plaintiff alleges that
8 "Defendants" failed to provide the owner of the property with a proper, valid, and
9 correct Notice of Default or Notice of Trustee Sale, as required by Wash. Rev.
10 Code § 19.144.020.

11 The Court has reviewed the Complaint and cannot find any allegations
12 regarding any specific conduct attributable to Defendant Priority Posting and
13 Publishing, Inc. As such, the Court grants Defendant Priority Posting and
14 Publishing, Inc.'s Motion to Dismiss.

15 **4. Remaining Claims**

16 **a. Securitization of the Loan**

17 Plaintiff alleges that severance of the ownership and possession of the
18 original Note and Deed of Trust has occurred, due to the securitization of the loan.
19 As a result, any party is legally precluded from foreclosing on the property unless
20 it can demonstrate full legal standing to do so. Plaintiff appears to be arguing that
21 the only persons who would have authority to foreclose are the holders of the
22 securitized trust. Courts have generally rejected this claim. *See Frazier v. Aegis*
23 *Wholesale Corp.*, 2011 WL 6303391 (N.D. Calif. Dec. 16, 2011) (identifying
24 courts that have rejected the argument that the only persons who would have
25 authority to foreclose are the certificate holders of the securitized trust). The Court
26 dismisses this claim.

27 **b. Consumer Protection Act**

1 Plaintiff alleges he is a victim of robo-signing.⁵ In his Complaint, Plaintiff
 2 alleges that “Defendant Chase and trustees were foreclosing on consumer
 3 residences having documents signed without reading them or knowing what the
 4 content entailed, falsifying, back dating and forging documents.”

5 In order to allege a claim under the Washington Consumer Protection Act,
 6 Plaintiff must allege: (1) unfair or deceptive act or practice; (2) occurring in trade
 7 or commerce; (3) impacting the public interest; (4) causing (5) injury to plaintiff
 8 in his or her business or property. *Schroeder v. Excelsior Management Group,*
 9 *LLC*, 177 Wash.2d 94, 114 (2013). A claim under the CPA “may be predicated on
 10 a per se violation of the statute, an act or practice that has the capacity to deceive
 11 substantial portions of the public, or an unfair or deceptive act or practice not
 12 regulated by statute but in violation of public interest.” *Klem v. Wash. Mut. Bank*,
 13 176 Wash.2d 771, 782 (2013).

14 As holder of the note, Defendant JPMorgan Chase had the legal right to
 15 foreclose on the loan. Plaintiff has not alleged that he was not in default on the
 16 loan. Nor has he alleged that JPMorgan Chase made a material misrepresentation
 17 or failed to disclose material terms. Plaintiff has not identified an unfair or
 18 deceptive act attributed to Defendant JPMorgan Chase Bank. Moreover, Plaintiff’s
 19 generalized claims of robo-signing do not adequately set forth a claim under the
 20 Washington Consumer Protection Act.

21 c. **Quiet Title Action**

22 Plaintiff seeks quiet title to the property that is subject to the loan and the
 23 Deed of Trust.

24

25 “Generally, robo-signing refers to ‘assembly-line signing and notarizing of
 26 affidavits for foreclosure cases, mortgage assignments, note allonges and related
 27 documents, all filed in courts and deed recorders in counties across the United
 28 States.’” *Klem*, 176 Wash.2d 792, no. 14. (citation omitted).

1 Wash. Rev. Code §7.28.120 provides:

2 The plaintiff in [a quiet title] action shall set forth in his complaint the
 3 nature of his estate, claim or title to the property, and the defendant
 4 may set up a legal or equitable defense to plaintiff's claims; and the
 5 superior title, whether legal or equitable, shall prevail.

6 An action to quiet title is an equitable proceeding "designed to resolve
 7 competing claims of ownership." *Walker*, 308 P.3d. at 728. A plaintiff in a quiet
 8 title action must prevail "on the strength of his own title, and not on the weakness
 9 of the title of his adversary." *Id.*

10 Plaintiff is not alleging a claim to quiet title based upon the strength of his
 11 own title. Rather, he is alleging that Defendants are not eligible beneficiaries and
 12 he is seeking to void the deed of trust on this basis. As set forth in *Walker*, this
 13 allegation does not support a quiet title action, and Plaintiff's quiet title action is
 14 dismissed.

15 5. Leave to Amend

16 Plaintiff may submit an amended complaint within **thirty (30) days** of the
 17 date of this Order. **The Amended Complaint will operate as a complete
 18 substitute for (rather than a mere supplement to) the present complaint.**

19 The Amended Complaint must be legibly rewritten or retyped in its entirety,
 20 may not incorporate any part of the original complaint by reference and must be
 21 clearly labeled the "First Amended Complaint." Cause number CV-13-087-RHW
 22 must be written in the caption.

23 Accordingly, **IT IS HEREBY ORDERED:**

24 1. Defendant JPMorgan Chase Bank's Motion to Dismiss, ECF No. 6, is
 25 **GRANTED.** The Court **dismisses** the claims asserted against Defendant
 26 JPMorgan Chase Bank, without prejudice.

27 2. Defendant Quality Loan Serv. Corporation's and Priority Publishing
 28 Co.'s Motion to Dismiss, ECF No. 7, is **GRANTED.** The Court **dismisses** the
 29 claims asserted against Quality Loan Service Corporation and Priority Publishing

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Co., without prejudice.

3. Plaintiff's *pro se* Motion to Deny Defendants' Motion of Dismiss, ECF No. 13, is **DENIED**.

4. Plaintiff shall have **thirty (30) days** from the date of this Order to file an Amended Complaint. Failure to file an amended complaint will result in dismissal of this action.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and provide copies to counsel and Plaintiff.

DATED this 20th day of November, 2013.

s/Robert H. Whaley
ROBERT H. WHALEY
United States District Court

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